

\$~28

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **TEST.CAS. 38/2012, I.As. 10039/2014, 1697/2019**

KULDEEP GANGWANI

..... Petitioner

Through: Mr. Ankit Jain, Adv.

versus

STATE & ANR

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

%

27.03.2019

SANJEEV NARULA, J.

1. The present petition under Section 276 of the Indian Succession Act, 1925 seeks grant of Letters of Administration of the last and final Will dated 8th August, 1996 executed by late Sh. Kauromal (hereinafter referred as “the Testator”). In the present petition, it is averred that the Petitioner is the sole beneficiary of the Will dated 8th August, 1996. The Testator is stated to have executed the said Will, which is duly attested by two attesting witnesses namely Sh. Balram Khubchandani and Sh. R. R. Bhardwaj. The Will dated 8th August, 1996 is reproduced hereunder:

“

02/03/018/21641

dt 26-3-95

WILL

I,KAUROMAL, S/O BUDHOMAL GAN-GWANI
(Here-in called K.B. GANGWANI) aged about 76 years,
resident of A-1, Lok Vihar Delhi 110034, while being in full

free and complete possession of my faculties and my sense of proper undertaking and being fully aware of the nature and consequences of my actions, do hereby execute this as my **LAST WILL AND TESTAMENTARY DISPOSITION.**

Whereas I am the owner of House property, Bearing No.1, in Block A, Lok Vihar Delhi 110034 (Here-in called A-1, Lok Vihar), Kitchen 3 Bed Rooms with attached baths rooms etc etc on each floor. The app: area is 281.25 Sq: Yds: This is my self acquired property. I, with my wife are living on first floor and Kuldeep with his family on ground floor.

Whereas, I have two sons (1) Jairam aged app: 50 years, born in Karachi (2) Kuldeep aged app: 41 years born in Delhi. Both are very dear to me and so their children. Jairam has built a new beautifull house in Sainik Farms and very well settled in life. I therefore, give my present house, A-1, Lok Vihar, Delhi 110034 to my second son Kuldeep Gangwani on the following conditions:-

- (1) My wife, Mrs.: LaxmiG-angani, will continue to occupy the first floor, till her life time.
- (2) All expenditure on maintainance, repairs, Electric & water charges, House Tax etc etc of the whole building shall be borne by Kuldeep Gangwani.

All my Bank Accounts, FDRS etc are in the joint account with my wife, Laxmi Gangwani as Either or Survivor. She may get it transferred in her name. God has given sufficient wealth to both of my sons and both of them are quite happy. I wish them further prosperity. Both shall have love and due respect for each other. God bless them.

I hereby give, devise and bequeth and the said foresaid House property to Kuldeep Gangwani. My all other legal heirs shall have no right to interfere in this will.

In case, my wife, Mrs: Laxmi Gangwani predeceases me, then all the moveable & immoveable property, standing in my name at the time of my death shall

devolve on my son Kuldeep Gangwani only.

This will is executed by me without any force, pressure or influence from any quarter.

In witness whereof, I the said K.B. GANGWANI have hereto signed at Delhi, this Eight day of August, 1996 in the presence of the following witnesses:-

Witness

Testator, __Sd/__

1. Sd/-
(Balram Khubchandani)

2. Sd/-
(R.R. Bharadwaj)

____ Sd/____
(K.B.GAN-GWANI)”

2. The Testator, at the time of his death was survived by his wife, Smt. Laxmi Gangwani as well as his two sons i.e. Petitioner as well as Respondent No.2 herein. The wife of the Testator has since expired on 2nd November, 2000.

3. Notice of the present petition was issued on 21st May, 2012. The citation directed to be issued, came to be published in the newspaper “Statesman” Delhi edition. Notice was also duly served upon State and other Respondents. Valuation reports have also been filed by the State.

4. The Respondent No.2, contested the present petition and filed objections to the said Will. On the basis of the objections, on 10th July, 2014, the following issues were framed:

“ (i) Whether the document dated 08.08.1996 is the last will and testament of late Sh. Kauromal? OPP

(ii) Whether the petitioner employed fraudulent means and undue influence in having late Sh. Kauromal execute the document dated 08.08.1996 in his favour?OPR
(iii) Whether the proceedings are barred by limitation?OPR
(iv) What relief, if any?”

5. A Court Commissioner was appointed to record the evidence and the statement of Petitioner as well as the attesting witness was recorded.

6. During the pendency of the present proceedings, the parties settled the dispute and filed a joint application No. 1697/2019. By way of said application, the compromise terms were brought on record. The relevant portion of said compromise terms reads as under;

“(C), Sh. J. R. Gangwani and his family members [his wife Mrs. Geeta Gangwani and his sons (i) Mr. Kumar Gangwani; and (ii) Mr. Vivek Gangwani] hereby admit and accept the correctness, legality and validity of the Will dt. 08.08.1996, executed by Late Sh. Kauromal. Sh. J.R. Gangwani undertakes that he or his family members [his wife Mrs. Geeta Gangwani and his sons (i) Mr. Kumar Gangwani; and (ii) Mr. Vivek Gangwani] shall not raise any dispute in relation to execution and effect of Will dt.08.08.1996 executed by Late Sh. Kauromal. Sh. J.R. Gangwani and his family members [his wife Mrs. Geeta Gangwani and his sons (i) Mr. Kumar Gangwani; and (ii) Mr. Vivek Gangwani] hereby specifically acknowledge the validity of the Will dt.08.08.1996, executed by Late Sh.Kauromal.

(D) Sh. J. R. Gangwani and his family members [his wife Mrs. Geeta Gangwani and his sons (i) Mr. Kumar Gangwani; and (ii) Mr. Vivek Gangwani] shall also execute their separate No Objections /Affidavits in that regard.

(E) Sh. J.R. Gangwani and his family members (his wife

Mrs. Geeta Goangwani and his sons (i) Mr. Kumar Gangwani; and (ii) Mr. Vivek Gangwani) hereby accept that they neither had, nor have nor shall have any right, title or interest, of any nature whatsoever, in the property bearing No. A-1, Lok Vihar, New Delhi-110034, including the construction existing thereupon. Sh. J.R. Gangwani and his family members (his wife Mrs. Geeta Gangwani and his sons (i) Mr. Kumar Gangwani; and (ii) Mr. Vivek Gangwani) undertake that they shall not claim any right in the said property in future. Sh. J.R. Gangwani and his family members (his wife Mrs. Geeta Gangwani) hereby accept and acknowledge that the said property, alongwith the entire construction existing thereupon, solely and absolutely belongs to the Petitioner, who is entitled to deal with the same in any manner he desires.

(F) Sh. J.R Gangwani and his family members (his wife Mrs. Geeta Gangwani and his sons (i) Mr. Kumar Gangwani; and (ii) Mr. Vivek Gangwani) hereby accept the mutation of the property bearing No. A-1, Lok Vihar, New Delhi-110034, already carried out or to be carried out in the name of the Petitioner and undertake not to challenge the same, in any manner whatsoever, in future.

(M) That in consideration of the aforesaid settlement and in lieu of all the alleged claims of Sh. J.R. Gangwani as well as of his family members [his wife Mrs. Geeta Gangwani and his sons (i) Mr. Kumar Gangwani; and (ii) Mr. Vivek Gangwani] and to purchase peace, the Petitioner herein has agreed to pay a sum of Rs.1,0,00,000/- (Rupees One Crore Only) to Sh. J. R. Gangwani. The said amount shall be paid by the Petitioner, to the Respondent No.2, by way of a bank draft, at the time of recording of the present compromise before the Hon'ble Court.”

7. The said application was allowed vide order dated 5th February, 2019, recording that the Petitioner had handed over to the Respondent No.2, the

Demand Draft No. 001982 dated 30th January, 2019 for an amount of Rs.1,00,00,000/-. Consequently, the objections of the Respondent No.2 were disposed of. Therefore, as on date, there is no objection to the grant of the Letters of Administration.

8. The Petitioner, son of the Testator had filed an affidavit by way of examination in chief and the said affidavit is marked as Ex. PW-2/A. He has also proved the Death Certificate of the Testator as Ex. P2. In the said affidavit the Petitioner has stated that he had extremely close relationship with Late Sh. K.B. Gangwani and he was living with the Petitioner during his life time. The Petitioner alone was looking after his father during his lifetime.

9. The Petitioner has further stated that in 3rd Week of November, 2000, a meeting had taken place at the resident of Mr. G. H. Anandani (the maternal uncle of the Petitioner) where the registered Will was read over by Mr. Balram Khubchandani (attesting witness), to all persons who were present during the meeting and the copy of said registered Will was also handed over to Mr. J.R. Gangwani/Respondent No.2. Mr. J.R. Gangwani/Respondent No.2 started living separately since year 1974-75 and never lived with the Testator and his mother Smt. Laxmi Gangwani and he never raised any dispute regarding the existence or validity of the said registered Will.

10. The attesting Witness Mr.Balram Khubchandani was examined as PW-1. The said witness has deposed that the Testator had called and requested him to be one of the attesting witnesses and asked him to come to the office of

Sub Registrar, Rohini in the morning of 8th August, 1996. The type-written Will produced by the Testator was read over and explained to the Testator and to him and the other attesting witness and thereafter, the Testator signed the aforesaid Will in his presence and in the presence of Mr. R.R. Bhardwaj, who was the second attesting witness. He has seen the other attesting witness and the Testator signing the Will. He had signed the Will as attesting witness and the Testator and Mr. R.R. Bhardwaj had also seen him sign the same. Mr. R.R. Bhardwaj had also signed the Will after putting his rubber stamp on the said Will and he as well as the Testator had seen the second attesting witness signing the Will. The said witness during his cross examination maintained its stand that he had put his signatures on the Will in question in the office of Sub Registrar. He also maintained that he had seen both the Testator and the attesting witness signing the Will in question.

11. PW-3, Mr. Vikas, LDC from the office of Sub Registrar, produced the record pertaining to the registration of the Will in question. The said witness confirmed that the original Will shown to the witness, was identical with the record maintained by the Sub Registrar.

12. Respondent no. 2 also filed his affidavit in evidence and was also cross-examined. However, in view of the compromise between the parties the objection raised by the Respondent no. 2 and the evidence in respect thereof has lost its relevance. Respondent no. 2 has given up its claim in respect of the property bearing no. A-1, Lok Vihar, New Delhi-110034, which has been bequeathed by the Testator to the Petitioner under the Will in question.

13. On the issue of the proceedings being barred by limitation, the principles

relating to the application of the Limitation Act, 1963 to probate proceedings have been aptly summarized in the case of **Kunvarjeet Singh Khandpur v Kirandep Kaur, (2008) 8 SCC** as under:

“(a) under the Limitation Act no period is advisedly prescribed within which an application for probate, letters of administration or succession certificate must be made;

(b) the assumption that under Article 137 the right to apply necessarily accrues on the date of the death of the deceased, is unwarranted;

(c) such an application is for the Court's permission to perform a legal duty created by a Will or for recognition as a testamentary trustee and is a continuous right which can be exercised any time after the death of the deceased, as long as the right to do so survives and the object of the trust exists or any part of the trust, if created, remains to be executed;

(d) the right to apply would accrue when it becomes necessary to apply which may not necessarily be within 3 years from the date of the deceased's death.

(e) delay beyond 3 years after the deceased's death would arouse suspicion and greater the delay, greater would be the suspicion;

(f) such delay must be explained, but cannot be equated with the absolute bar of limitation; and

(g) once execution and attestation are proved, suspicion of delay no longer operates.”

Having regard to the fact that the execution as well as attestation have been proved and there is no objection surviving, the present petition cannot be

held to be barred by limitation.

14. Pertinently, there is no opposition to the Will in view of the compromise between the parties, Respondent No.2 has already received an amount of Rs. 1,00,000,00/- and has withdrawn all allegations/objections to the Will and has given 'No Objection' to the grant of probate. . In view of the above discussion and the evidence brought on record, the Court is satisfied that the Petitioner has succeeded in proving that the Testator Late Mr. Kauromal had executed the Will dated 8th August, 1996 and the said Will is his last Will in Testament.

15. Consequently, the present petition is allowed. Let the Letters of Administration of the registered Will dated 8th August, 1996 of Late Mr. Kauromal be granted in favour of the Plaintiff subject to his furnishing the requisite court fee fixed in terms of valuation report. Since the Petitioner is a sole beneficiary, he is exempted from furnishing the administrative bonds and surety bonds.

16. Registry is directed to inform the Petitioner the amount of the court fee that is required to be paid. Petition is disposed of in the above terms.

SANJEEV NARULA, J

MARCH 27, 2019

Pallavi